

United States Supreme Court

Brandt Trust v. United States, 134 S. Ct. 1257 (U.S. 2014)

Issue

Did the U.S. retain an implied ownership interest in a public right of way after the underlying lands were granted into private ownership?

Background

The General Railroad Right-of-Way Act of 1875 provides railroad companies “right[s] of way through the public lands of the United States,” 43 U.S.C. 934. In 1908, the U.S. granted a right-of-way (ROW) to the Hahn’s Peak and Pacific Railway Company to build a 66-mile railway from Laramie, Wyoming to Colorado. In 1976, the United States granted land that surrounds the ROW, Fox Park, to the Brandts. In 1986, a new railway company acquired the ROW. The company operated the ROW until it officially abandoned the land in 2003. Following the abandonment, the U.S. sued the Brandt Revocable Trust and other potential property owners under a federal statute governing the disposition of abandoned or forfeited railroad grants. The government argued that this statute reverts abandoned ROWs back to the federal government’s exclusive possession. The United States sought a judicial order of abandonment and exclusive possession of the ROW. The Brandt Revocable Trust and property owners filed a countersuit seeking full possession of the ROW, insofar as it cut through their land. They argued that the statute only granted an easement to the United States, not full possession. The district court granted the interest in the ROW to the U.S. and the Tenth Circuit affirmed.

Holding

The Court held that the language, legislative history, and subsequent administrative interpretation of the 1875 Act clearly grants an easement for the railroad’s land and not a more enduring property interest. When the U.S. granted Fox Park to Melvin and Lula Brandt, it did not reserve for itself any additional interest in the railroad property. Therefore, pursuant to the 1875 Act, when the railroad company abandoned the land, it should have been settled as an easement. The Court went on to note that under well-settled property law, an easement disappears upon abandonment, and the land owner regains full use of his property. Thus, when the U.S. patented land to the Brandts subject to the ROW, without explicitly reserving any interest in the right-of-way, it gave up any future interest in the railroad corridor. Accordingly, the land in this case would revert to the Brandt Revocable Trust and property owners.

Issues

1. Does the Takings Clause of the Fifth Amendment apply only to real property?
2. Can the government avoid the duty to pay just compensation for the physical taking of property by reserving the property owner a contingent interest in the value of the property?
3. Does a *per se* taking occur when the government mandates the relinquishment of specific, identifiable property as a condition of permission to engage in commerce?

Background

In 1949 the U.S. Department of Agriculture implemented a marketing order authorizing the federal government to reserve a percentage of the yearly California raisin crop to stabilize the supply and price of California raisins. Under the marketing order, farmers are entitled to a share of the proceeds acquired when the government sells the reserved raisins. Horne, a farmer and raisin producer, attempted to circumvent the marketing order by processing his own raisins, which he claimed exempted his raisins from the marketing order's reserve requirement. The Department of Agriculture claimed Horne's raisins were still subject to the market order, and following administrative proceedings, Horne was fined nearly \$700,000.

Horne sued the Department of Agriculture and claimed that the marketing order violated his Fifth Amendment rights against uncompensated takings. The district court found in favor of the Department of Agriculture. The U.S. Court of Appeals for the Ninth Circuit held that it lacked standing to address Horne's claim, because Fifth Amendment takings claims are within the jurisdiction of the Court of Federal Claims. The U.S. Supreme Court held that the appellate court did have jurisdiction and remanded the case. On remand, the appellate court found for the Department of Agriculture by holding that the reserve requirement did not act as a *per se* taking because Horne's raisins constituted personal property rather than real property. The appellate court also held that the marketing order did not constitute a taking because there was a sufficient nexus and rough proportionality between the reserve requirement and the specific interest the government seeks to protect (i.e., stabilizing raisin prices).

Holdings

The Court held (8-1) that the Takings Clause applies with equal force to personal as well as real property. Thus, the reserve requirement constituted a taking because it deprives the owners of their property rights to "possess, use, and dispose of" the raisins. Because a physical taking has occurred, returning the net proceeds of the sale of the raisins to the owners does not exempt the government from paying just compensation for the taking itself. The Court also held that making the reserve requirement a condition on legally participating in the raisin market effects a *per se* taking because it cannot be properly characterized as a voluntary exchange for a governmental benefit. Therefore, the government should pay a just compensation for the taking, which the

government has already calculated in its attempt to fine the Hornes the fair market value of the raisins at issue, by rescinding the fine it had imposed.

T-Mobile S. LLC v. City of Roswell, Ga., 135 S. Ct. 808 (2015)

Issue

The questions presented are (1) whether, (2) in what form, and (3) when localities must provide reasons when they deny telecommunication companies' applications to construct cell towers.

Background

Respondent Roswell's city council (Council) held a public hearing to consider an application by petitioner T-Mobile South, LLC (T-Mobile) to build a cell phone tower on residential property. Council unanimously passed a motion to deny the application. Two days after the denial, the City's Planning and Zoning Division informed T-Mobile via letter of the decision and that the minutes for the hearing would be available. The minutes were published 26 days later. T-Mobile sued the City, claiming its denial of the application to build a cell tower violated the Telecommunications Act of 1996 (Act). The Act provides that a locality's denial "shall be in writing and supported by substantial evidence contained in a written record," 47 U.S.C. § 332(c)(7)(B)(iii). The Act also provides that an entity adversely affected by a locality's decision may seek judicial review within 30 days of the decision. § 332(c)(7)(B)(v). The District Court held that the City did violate the Act because it failed to issue a written decision stating its reasons for deny the application. The Eleventh Circuit Court reversed, holding the Act was satisfied because T-Mobile receive a decision letter and possessed a transcript of the hearing that provided reasoning. The Circuit Court did not consider when the City provided its written reasons to petitioner.

Holding

The Court (6-3) reversed and remanded the Circuit Court's reversal of a summary judgment for T-Mobile. First, the Court held that (1) a locality must provide reasons when it denies a siting application because an applicant needs to know whether to seek judicial review and courts need a record of reasons to determine whether the decision is supported by substantial evidence. The Court reasoned that the Act borrows the "substantial evidence" requirement from administrative law, which requires a record for the reviewing court. Second, the Court held that (2) a locality's reasons for denying a siting application need not appear in the same writing that conveys locality's denial, so long as the reasons are sufficiently clear, because nothing in the statute requires that the reasons be in any particular form, abrogating *Southwestern Bell Mobile Systems, Inc. v. Todd*, 244 F.3d 51, *New Par v. City of Saginaw*, 301 F.3d 390, and *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715. Third, the Court held that (3) the locality must provide or make available its written reasons at essentially the same time as it communicates its denial because the adversely affected party only has 30 days to seek judicial review. Lastly, the Court held that (4) the city did not comply with the Act's requirement that its decision be in writing and supported by substantial evidence because the writing and reasons were not provided contemporaneously.

Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218 (2015)

Issue

1. Is an ordinance that regulates signs for communicating a message, influencing an election, or directing the public to specified events facially content-based, requiring strict scrutiny?
2. Does this violate freedom of speech?

Background

The Town of Gilbert, Arizona (Town) has a comprehensive code (Sign Code) that prohibits the display of outdoor signs without a permit. 23 categories of signs are exempt. Three relevant exemptions are: "Ideological Signs" that communicate a message or ideas; "Political Signs" that are designed to influence the outcome of an election; and "Temporary Directional Signs" which include signs directing the public to a church or other qualifying event. Temporary Directional Signs are subject to additional restrictions, including that signs may be displayed no more than 12 hours before the event and one hour after. Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, posted signs early each Saturday bearing the Church name, time, and location of the next serviced, and did not remove the signs until around midday Sunday. The Town cited the Church for exceeding the time limits to display temporary directional signs and for failing to include an event date on the signs. The Church filed suit, claiming that the Sign Code violated their freedom of speech. The District Court denied their motion for a preliminary injunction. The Ninth Circuit affirmed, holding the signs were content neutral and satisfied intermediate scrutiny because the restrictions did not endorse or suppress a specific idea or viewpoint.

Holding

The Court (9-0) unanimously reversed and remanded, holding that the Sign Code was subject to strict scrutiny and violated free speech guarantees. The Court held this is not content-neutral because it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.*, 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980). Rather, the Sign Code is facially content based because it defines categories of temporary, political, and ideological signs on the basis of their messages, and then subjects each category to different restrictions. That is, the relevant restrictions "depend entirely on the communicative content of the sign." *Id.* at 2227. Thus, the Court applied strict scrutiny under this standard.

The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end.

The Court reasoned that the Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem, nor has the Town shown that these signs pose any greater issue than other signs. Thus, the Court held that even if the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive.

Tenth Circuit

San Juan County v. United States, 754 F.3d 787 (10th Cir. 2014)

Issue

Did the state and county establish 10 years of continuous public use of Salt Creek Road as a public thoroughfare prior to reservation of the national park in 1964?

Background

Salt Creek Road is an unimproved 12.3-mile road intertwined with the creek bed in Salt Creek Canyon. The state and county wanted to use their claimed right-of-way to prevent the United States from closing the Salt Creek Road to vehicle traffic. The road is the primary way for tourists to reach several scenic sites within the Canyonlands National Park, including Angel Arch. Without vehicle access, the only way to access Angel Arch is to make the nine-mile trek by foot. The state and county based their claim on Revised Statute (R.S.) 2477: "[T]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." Congress enacted R.S. 2477 in 1866, and it remained in effect until 1976. Even then, however, Congress preserved the rights-of-way established under the statute.

Holding

Finding no reversible error, the Tenth Circuit affirmed the trial court's holding that the state and county failed to establish 10 years of continuous public use of Salt Creek Road as a public road. The evidence at trial suggested one of the more prominent uses of the Salt Creek Road prior to the reservation of Canyonlands National Park was cattle ranching. However, the trial judge concluded the cattle-grazing evidence did not establish the existence of a public thoroughfare because: (1) the grazing use occurred pursuant to federal grazing permits and a "1942 deed to 80 acres of land near Kirk's Cabin;" and (2) "it would strain the language to characterize [the ranchers'] presence as a 'public' use, or [to say the] Salt Creek Canyon was then being used as a 'public thoroughfare.'" Furthermore, the trial judge considered the lack of a discernable road, alongside other evidence, as probative of whether a public thoroughfare existed, noting that the lack of a discernable road during the 10 years prior to the reservation of Canyonlands National Park was consistent with the "pristine solitude" prevailing in the Salt Creek Canyon at the time. As such, the Tenth Circuit found the assessment by the trial court of evidence regarding cattle-grazing and the lack of a discernable road was properly done.

Issue

Does the U.S. Army Corps of Engineers have the authority to issue nationwide permits under § 404(e) of the Clean Water Act, authorizing activities involving discharge of dredged or fill material in U.S. waters and wetlands?

Background

A 485-mile-long pipeline, originally a segment of the Keystone XL Pipeline, runs from Cushing, Oklahoma, to the Gulf Coast and crosses over two thousand “waters of the United States,” including wetlands. Section 404 of the Clean Water Act gives the Corps jurisdiction over the discharge of any dredged or fill material into these waters. Prior to construction, TransCanada obtained verification from the Corps that its Nationwide Permit No. 12 for utility lines (NWP 12) applied to each water crossing along the pipeline’s route. Three environmental groups challenged the validity of the nationwide permit and verification letters, claiming the Corps violated NEPA, the CWA, and the APA in approving the pipeline’s construction. Specifically, they challenged the validity of the Corps’ reissuance of nationwide permit 12 as well as its verification that the pipeline could proceed under it. The lower court denied the groups’ motion for a preliminary injunction, ruling that the groups did not have a likelihood of success on the merits and that other equitable factors did not favor granting the injunction. On appeal, the groups argued that the lower court erred in concluding that the threatened environmental injuries were outweighed by the financial harm that the injunction would cause.

Holding

With respect to NEPA, the Court ruled that this argument had been waived, in particular the alleged risk of oil spills, because it has not been raised with the Corps during the comment period that was set aside for the submission of such comments. With regard to the CWA, the plaintiffs argued that the Nationwide Permit issued to TransCanada violated the law by authorizing linear projects with substantial environmental impacts and deferring part of the minimal impacts determination to project-level personnel who would be involved in the pipeline project after the Corps’ permitting initial authorization had been granted. However, the Court held that the environmental groups did not show that the permit authorizes linear projects with more-than-minimal impacts, nor that the Corps of Engineers, allowing for Chevron deference, impermissibly construed the CWA by providing for a partial deferral of the minimal-impact analysis.

Accordingly, the Tenth Circuit found the groups failed to demonstrate that the lower court’s determination regarding the balance of harms factor was an abuse of discretion. Specifically, the Court found that the groups’ assertion that injunctive relief cannot be denied based on a weighing of economic harm is mistaken. Rather, the Court noted that the U.S. Supreme Court has recognized that financial harm can be weighed against environmental harm and, in certain instances, outweigh it.

NEW MEXICO STATE CASES

State v. Pangaea Cinema LLC, 2013-NMSC-044 (N.M. 2013)

Issue

Was a movie theatre an “adult entertainment establishment” within the meaning of a city statute banning such establishments from certain commercial zoning areas where the theatre only showed adult films one weekend a year and there was no evidence of negative secondary effects?

Background

The City of Albuquerque has an ordinance that does not allow “adult amusement establishments” in its “Community Commercial” zone (i.e., C-2 zone), either as a permissive or conditional use, in the Nob Hill commercial area. The Guild Cinema, an old single screen movie house, is located in Nob Hill. The Guild hosts an adult film festival one weekend a year called “Pornotopia.” In November 2008, Pornotopia featured at least one erotic film portraying gay sex.

The City’s ordinance is modeled after one which had been upheld by the U.S. Supreme Court in *Young v. American Mini Theaters*, 427 U.S. 50 (1976). The ordinance defines “adult amusement establishment” as “an establishment, such as . . . a theater. . . that provides amusement or entertainment featuring. . . film, motion pictures. . . or other visual representations or recordings characterized by or distinguished by an emphasis on. . . specified anatomical areas or. . . specified sexual activities.” The ordinance further states that “any use not designated as a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.” Thus, the ordinance relegated adult entertainment to certain zones in the City, and set fixed distances for separation of these uses from schools and churches. In this case, the City enforced the ordinance by convicting the Guild of a zoning violation for operating an “adult amusement establishment” in an improper zone.

The Metropolitan Court found the Guild guilty. On appeal, the District Court held that the Guild had committed a zoning violation, and that the ordinance was constitutional as applied to the Guild. The District Court also imposed a criminal fine of \$500. The Court of Appeals subsequently affirmed the Guild’s conviction.

Holding

The New Mexico Supreme Court reversed the Court of Appeals. The parties agreed that the film shown was “adult amusement or entertainment.” Thus, the issue before the Court did not concern the content of the film shown, but rather, whether the Guild was an “adult amusement establishment.” The Court noted that regulation of adult entertainment has been upheld by the U.S. Supreme Court when it addresses the “secondary effects” which usually accompany such entertainment, such as drugs and prostitution. To that end, the Court found no unfavorable “secondary effects” reported when the Guild had its festival. In fact, Nob Hill merchants were pleased with the amount and quality of business that the festival created in their neighborhood.

The Court stressed that adult films were only shown one weekend a year during a festival, which didn't make the Guild an adult entertainment establishment. Furthermore, there was no evidence of the "secondary effects" which might have enabled the City to close down the festival and cite the Guild for a zoning violation. In support of its holding, the Court gave examples of other "one time showings," and citing case law from other jurisdictions, concluded that the Guild could not be construed as an adult entertainment establishment. Accordingly, the Court concluded that it is unconstitutional to zone a business as "adult" based on a single weekend performance, especially since there was no evidence of negative secondary effects. And although the Court stated that the City could change its ordinance to include "one-time showings" of adult entertainment, such "one-time showings" would still have to result in certain negative secondary effects that were not present here.

Santa Fe Pac. Trust, Inc. v. City of Albuquerque, 2014-NMCA-093 (N.M. Ct. App. 2014)

Issue

Is pre-condemnation planning and publicity by a public entity enough to constitute a taking requiring just compensation?

Background

Former Mayor of Albuquerque, Martin Chavez, wanted to build an arena downtown on property owned and occupied by Santa Fe Pacific Trust, Inc. ("Trust"). The Mayor's administration did extensive pre-condemnation planning for the arena, generating significant publicity surrounding the project. However, the City Council refused to approve the project and the City never acquired property for the arena. Subsequently, the Santa Fe Pacific Trust sued the City alleging that the City had taken its property without providing just compensation. Specifically, the Trust claimed that the publicity surrounding the proposed arena had caused the Trust to lose tenant leases and had interfered with its contract relations.

Holding

The New Mexico Court of Appeals ruled that the City's pre-condemnation planning and publicity did not amount to a taking under either state or federal law. The Court held that since the City had never physically entered onto the property nor actually taken any of it for the proposed arena, no taking had occurred. Specifically, the Court noted that:

The mere manifestation of intent to take or a threat to condemn does not constitute condemnation blight warranting recovery for reduction in value of property. There must also be some direct restriction on the use of the property... [U]nless the government's actions directly restrict the use of that property, the property owner is not entitled to compensation for those actions. Governmental entities must be encouraged to air their planning idea in public so that they can be fully vetted, challenged, improved, or rejected.

Issue

Is a county ordinance constitutional when banning all drilling and fracking, and removing constitutional due process rights afforded to a person from oil and gas companies?

Background

Mora County enacted an ordinance banning all drilling and fracking activities within its jurisdiction. Although SWEPI had no immediate intent to conduct such operations, it held state-regulated oil and gas leases within the County. Of particular note, the County ordinance explicitly noted that oil and gas companies “shall not have the rights of ‘persons’ afforded by the United States and New Mexico Constitutions,” including First Amendment and due process. SWEPI challenged the ban, claiming that the ordinance violated the Supremacy Clause and was preempted by state law. The County argued that SWEPI lacked standing to sue because it had not suffered damages due to its lack of an intent to begin any drilling or fracking operations.

Holding

Judge James Browning, of the United States District Court for the District of New Mexico, ruled on February 2, 2015, that Mora County, New Mexico, could not ban fracking and drilling in that county, a rural area about 100 miles north of Santa Fe. Judge Browning ruled that Mora’s ordinance violated the U.S. Constitution’s Supremacy Clause by attempting to discard corporate rights protected by federal case law. Browning wrote that the County should be challenging the rights of corporations in the U.S. Supreme Court, since that’s the only Court which can overrule its own precedent. He also stated that Mora’s ban conflicted with New Mexico Law, under which the State controls oil and gas development.